



August 10, 2001

Mr. John Steiner
Division Chief
City of Austin - Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR2001-3509

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150532.

The City of Austin (the "city") received fourteen requests for a specific 911 tape. Additionally, one of the requestors seeks a copy of all arrest records and citations issued to two individuals, and two requestors seek a copy of a specific incident report. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you claim that the request for all law enforcement records of the named individuals implicates their common law privacy rights. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Common law privacy is encompassed in section 552.101. For information to be protected from public disclosure by the common law right of privacy the information must meet the criteria set out in *Industrial Foundation v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public, 540 S.W.2d at 685. In *United States Department of Justice v. Reporters Committee For Freedom of the Press*, 489 U.S. 749 (1989), the U.S. Supreme Court concluded that where an individual's criminal history record information is compiled or summarized by a governmental entity, the information takes on a character that implicates an individual's right of privacy in a manner that the same individual records in an uncompiled state do not. In this instance, the requestor asks for all arrest information and citations compiled on certain individuals. We believe that the individuals' right to privacy

has been implicated by this request. Thus, to the extent the named individuals are listed as suspects, we conclude that the city must withhold this information under section 552.101 of the Government Code. *See id.*; *see also* Gov't Code § 411.106(b).

You next claim that the 911 tape and the incident report are excepted from disclosure under section 552.108. Section 552.108, the "law enforcement exception," provides in relevant part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or] (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the 911 tape and the incident report relate to criminal cases pending in the City of Austin Municipal Court, and that the release of this information would interfere with the prosecution of those cases. You also state that you have released basic information from the incident report. *See* Gov't Code § 552.108(c); *see also Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) (summarizing types of information considered basic information); *see generally* Open Records Decision No. 597 (1991) (stating that basic information may not be withheld under Gov't Code § 552.103). Based on your representations and our review of the information, we conclude that the 911 tape and the remaining portions of the incident report may be withheld from disclosure under section 552.108(a)(1). You may, however, release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

Because we are able to make a determination under sections 552.101 and 552.108, we need not address your other arguments against disclosure. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

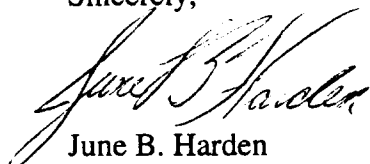
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "June B. Harden".

June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 150532

Enc. Submitted documents and audiotapes

c: Mr. Jaime Ortiz
Fox 7 News
119 East 10th Street
Austin, Texas 78701
(w/o enclosures)

Ms. Roxann Martinez
KPRC News 2
P.O. Box 2222
Houston, Texas 77252-2222
(w/o enclosures)

Mr. Jonathan Osborne
Austin American-Statesman
P.O. Box 670
Austin, Texas 78767
(w/o enclosures)

Mr. Greg Fulton
Time
2205 Harris Tower
233 Peachtree Street, Northeast
Atlanta, Georgia 30303
(w/o enclosures)

Mr. Chris Hanson
KTRK TV
3310 Bissonnet
Houston, Texas 77005
(w/o enclosures)

Ms. Melissa Barrientos-Whitfield
News 8 Austin
1708 Colorado Street
Austin, Texas 78701-1311
(w/o enclosures)

Mr. Kevin Benz
News 8 Austin
1708 Colorado Street
Austin, Texas 78701-1311
(w/o enclosures)

Ms. Connie L. Mabin
Associated Press
1005 Congress Avenue, Suite 995
Austin, Texas 78701
(w/o enclosures)

Ms. Gitika Ahuja
ABC News
2680 Cumberland Parkway, Suite 160
Atlanta Georgia, 30339
(w/o enclosures)

Mr. Daniel Green
The Smoking Gun
420 Lexington Avenue, Suite 4010
New York, New York 10170
(w/o enclosures)

Mr. Phil Valentine
WLAC Radio
55 Music Square West
Nashville, Tennessee 37203
(w/o enclosures)

Mr. Kenny Rahmeyer
KLBJ-AM
8309 North IH-35
Austin, Texas 78753
(w/o enclosures)

Mr. Carl Limbacher
NewsMax
85 Pine Hollow Road
Oyster Bay, New York 11771
(w/o enclosures)

Mr. Phil Magers
United Press International
115 North Edgefield Avenue
Dallas, Texas 75208
(w/o enclosures)